

### **Remarks**

This Amendment is responsive to the Office Action mailed May 13, 2005.

#### **Objections and 35 USC § 112 Rejections**

Claim 27 was objected to for an informality. Claim 27 has been amended to overcome the objection.

Claims 1-2, 5-7, 9, 27-31, and 35-44 were rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

These claims have been amended to overcome the § 112 rejections.

#### **35 USC § 103 Rejections**

Claims 1-2, 5-7, 9, 27-31 and 35-44 were rejected under 35 USC § 103(a) as being unpatentable over Küspert, et al. (U.S. Patent No. 5,810,339) (Küspert) in view of Besonen, et al. (U.S. Patent No. 5,307,753) (Besonen) and further in view of Kimura, et al. (U.S. Patent No. 4,629,167) (Kimura).

In reference to claims 1, 27, and 35-44, Küspert was stated to teach the use of a counterbalance comprising a protective housing (22, 23) having a first end/tube (22) attached to a tailgate (12) and a second end/tube (23) attached to the vehicle body (10); wherein when the counterbalance is in a fully extended position, the protective housing is oriented at an angle between the tailgate and the vehicle body (Figure 1) and wherein the counterbalance is in the fully retracted position, the protective housing is oriented in a vertical position with respect to the vehicle body and the tailgate. The Examiner acknowledged that Küspert lacks the specific counterbalance claimed.

Besonen, et al. was deemed by the Examiner to provide a counterbalance capable of use on a tailgate of a motor vehicle, the counterbalance at least partially controls a load applied to the counterbalance comprising: an elastic element (30) that at least partially counters the load; a flexible extension limiter (25)

that provides a stop which defines a fully extended position of the counterbalance and which counters loads applied to the counterbalance after the counterbalance is in the fully extended position. The Examiner also acknowledged that Besonen lacks the teaching of a second member of the housing having a projection forming a gap between first and second housing members.

The Examiner concluded that it would have been obvious to one of ordinary skill in the art at the time of the invention to have provided the tailgate assembly of Küspert with a counterbalance like that of Besonen.

Kimura, et al. was stated to teach a projection that forms a gap between first and second housing members (see Figure 4).

The Examiner concluded that it would have been obvious to one of ordinary skill in the art at the time of the invention to have provided Küspert as modified by Besonen with a projection forming a gap between first and second housing portions taught by Kimura.

Claim 1 has been amended to call for a housing having a first tube and a second tube received within the first tube, wherein the second tube has at least one longitudinally extending rib extending on an outer surface of the second tube forming a gap between the tubes. Claim 1 also calls for the protective housing to at least partially cover the elastic element and the flexible extension limiter.

None of the prior art, alone or together, suggests a pair of tubes with an inner tube having longitudinally extending rib extending on an outer surface of the inner tube. Specifically, as acknowledged by the Examiner, Küspert does not teach the counterbalance structure of claim 1 and Besonen does not teach ribs extending from inner tube 13. Kimura does not teach a longitudinally extending rib on an outer surface of a tube. Rather, Kimura shows a piston having a projection from a flat surface thereon which is received by a cylinder but does not teach a longitudinally extending rib on an outer surface of a tube. It simply would not have been obvious to combine the teachings of Kimura, which relates to a piston, with either Besonen or Küspert. Furthermore, none of the references teach a rib extending on an outer surface of a tube. Moreover, none of the prior art, in any combination teaches a

protective housing at least partially covering an elastic element and a flexible extension limiter. Thus, for at least these reasons, claim 1 is in condition for allowance.

Claim 27 has been amended to recite that the housing has a first tube and second tube telescopically received within the first tube, where the second tube has a plurality of ribs formed on an outer circumference of the second tube. Claim 27 also recites that the elastic element and the flexible extension limiter are positioned in the protective housing.

As stated for claim 1, none of the prior art of record in any combination teaches or discloses a plurality of ribs extending along an outer circumference of an inner tube or teaches a protective housing covering an elastic element and a flexible extension limiter; thus, claim 27 is in condition for allowance.

Claim 41 has been amended to recite that the second tube has a plurality of ribs symmetrically extending at positions approximately 90° apart on the tube outer surface. Claim 43 has been amended to recite that the ribs extend approximately 90° apart from the second tube.

As previously argued for claims 1 and 27, none of the prior art references teaches or suggests an inner tube with ribs extending along an outer surface thereof, and positioned 90° apart. Kimura merely shows two projections 180° apart from a flat surface of the piston.

Thus, claim 41 and claims 2, 5-7, 9 and 35-37 dependent thereon, and claim 43 and claims 28-31 and 38-40 dependent thereon are each in condition for allowance.

With reference to claims 2 and 28, Besonen was stated to provide a counterbalance where the elastic element is a spring. Claim 2 depends from amended claim 41 and claim 28 depends from amended claim 43 and are in condition for allowance.

With reference to claim 5-6 and 29-30, Besonen was stated to provide a counterbalance where the flexible extension limiter is a material strap. Claims 5

and 6 depend from amended claim 41 and claims 29-30 depend from amended claim 43 and are in condition for allowance.

With reference to claims 7, 9 and 31, Besonen was stated to provide a counterbalance including a protective housing that at least partially covers the elastic member and the flexible extension limiter. Claims 7 and 9 depend from amended claim 41 and claim 31 depends from amended claim 43 and are in condition for allowance.



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Amendment Dated August 15, 2005  
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### Conclusion

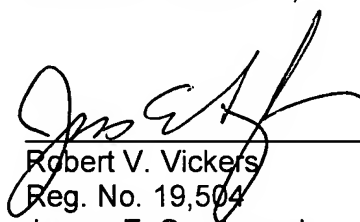
In view of the above arguments and comments presented, it is respectfully submitted that all pending claims are patentably distinct and unobvious over the art of record.

Allowance of all claims and early notice to that effect is respectfully requested.

Respectfully submitted,

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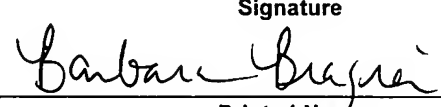
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